

APR 10 2006

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

TIMOTHY E. STALBAUM,

Defendant - Appellant.

No. 04-30477

D.C. No. CR-04-00256-1-ALA

MEMORANDUM*

Appeal from the United States District Court
for the District of Oregon
Ann L. Aiken, District Judge, Presiding

Submitted April 5, 2006 **

Before: HAWKINS, McKEOWN, and PAEZ, Circuit Judges.

Timothy E. Stalbaum appeals from his 37-month sentence imposed following a guilty plea to three counts of uttering counterfeit obligations, in violation of 18 U.S.C. §§ 472, 471, and 474(a).

We reject Stalbaum's contention that the district court's use of the United

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

** This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

States Sentencing Guidelines as mandatory was a constitutionally-impermissible factor upon which the district court relied, and therefore, that his waiver of appeal is inapplicable. We disagree, *see United States v. Moreno-Hernandez*, 419 F.3d 906, 915-16 (9th Cir. 2005) (clarifying that a sentence under the mandatory guideline regime without judge-found enhancements was nonconstitutional error under *United States v. Booker*, 543 U.S. 220 (2005)); *United States v. Ameline*, 409 F.3d 1073, 1078 (9th Cir. 2005) (en banc) (“A constitutional infirmity arises only when extra-verdict findings are made in a mandatory guidelines system.”), and enforce the waiver, *see United States v. Nguyen*, 235 F.3d 1179, 1182 (9th Cir. 2000) (stating that an appeal waiver is valid when it is entered knowingly and voluntarily).

DISMISSED.